UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.332
20 October 1998

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 332nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 13 May 1998, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.332/Add.1.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.98-16132 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 6) (continued)

Third periodic report of Panama (CAT/C/34/Add.9)

1. At the invitation of the Chairperson, Mr. Saenz Fernandez, Mr. Kam and Mr. Bonagas (Panama) took places at the Committee table.

2. The CHAIRPERSON invited the Panamanian delegation to introduce the third periodic report of Panama (CAT/C/34/Add.9).

3. Mr. SAENZ FERNANDEZ (Panama), describing the main aspects of the Panamanian penal system that were relevant to the Convention, said that the definition of torture embodied in the Convention had been incorporated in the Panamanian legal system and included in articles 156 to 160 of the Penal Code. Panamanian law also followed the definition of torture contained in the Inter-American Convention to Prevent and Punish Torture of the Organization of American States. All legal decisions were required to take account of the definition of torture embodied in those instruments. Moreover, the Judicial Code prohibited the release on parole of any person convicted of an offence of torture or ill-treatment.

4. Article 21 of the Constitution provided that all legal requirements must be met in bringing legal proceedings and anyone subjecting a detainee to a prohibited act of cruelty was liable to dismissal and prosecution. Article 160 of the Penal Code provided for two to five years' imprisonment for public servants found guilty of torture or ill-treatment; a public servant who subjected a detainee to ill-treatment would be sentenced to between 6 and 20 months' imprisonment.

5. Article 22 of the Constitution provided that, a person suspected of having committed an offence had the right to be presumed innocent until proven guilty by the Attorney-General's Office. A person who was arrested must be informed of the reasons for his arrest in terms commensurate with his level of education and had the right to appoint a lawyer or to receive legal aid if he could not afford his own lawyer. Public servants could not carry out body searches without a warrant.

6. At the initiative of the Attorney-General's Office, all prisons had installed locked "prison letterboxes" to receive prisoners' complaints of human rights abuses. The letterboxes were opened every month in the presence an official of the Attorney-General's Office and a representative of the Director of the prison, and the complaints examined. In addition, the Judicial Code specified that judges, magistrates and investigating officials should visit the prisons each month to report to the inmates on their cases, in terms they could understand, listen to complaints and suggestions and check on the physical conditions of their detention. The Judicial Code further provided that, from the time of their arrest, suspects had the right to appoint a lawyer who was not only responsible for defending them, but could also submit petitions, request evidence, lodge appeals, request copies of documents, etc.; the investigating authority was required to inform the

accused of the charges against him and of any evidence that to linked him with the offence committed. The entire proceedings were rendered void if a public servant attempted to obtain from the accused, by means of physical, moral or psychological pressure, confessions or statements which implicated another person, and civil and criminal proceedings might be instituted against him. In addition, before being placed in pre-trial detention, the accused must be informed of the reasons for that measure and of the factual and circumstantial evidence against him.

7. Act No. 3 of 1991 had established less stringent precautionary measures in order to limit as far as possible the number of people held in pre-trial detention, including a ban on leaving Panama without authorization, the obligation to report regularly to a public authority, the obligation to reside within the corresponding jurisdiction and to inform the authorities of the place of residence, and the obligation on to remain confined at home or in a health establishment if committal to such an establishment was medically justified. Under that Act, a person could not be held in pre-trial detention for an alleged offence carrying a sentence of under two years' imprisonment, or if the accused was a woman who was either pregnant or breastfeeding, or a person over 65 years of age, a drug addict or an alcoholic undergoing treatment, in which case the authorities must verify that the accused was indeed undergoing such treatment. Judges endeavoured to impose the least stringent precautionary measure possible in the light of the circumstances surrounding the case, including the risk that the defendant might attempt to flee, destroy evidence or commit a violent act, and the seriousness of the alleged offence.

8. No one could be exempted from criminal responsibility for violating any principle embodied in the Constitution, even if he claimed to have acted under superior orders. The sole exception related to members of the police force, although, the Case Law of the Supreme Court of Justice had established that they could not commit a murder or other serious violation of human rights with the justification that they were acting on orders and must answer for their actions.

9. The Penal Code provided for the deferral of sentence in the event of serous illness or in the case of a woman who was pregnant or had recently given birth; in addition, if the convicted person suffered from a mental disorder or was unable to understand the nature and importance of the sentence imposed on him, it would be deferred until he had recovered. Pursuant to Act No. 19 of 1991, the Supreme Court's Third Administrative Litigation Division was responsible for proceedings relating to human rights violations and, specifically, acts of torture committed by public servants. For that purpose, it was not required that the injured person should have previously exhausted all administrative remedies.

10. Extradition applications relating to an offence, particularly one involving torture, should be submitted through the appropriate diplomatic channels to the Ministry of Foreign Affairs, which would ensure that all the conditions provided for in international law were met. Extradition was then granted, subject to compliance with certain requirements and provided specifically that the person in question would not incur the death penalty, torture or other cruel, inhuman or degrading treatment. A person whose

extradition had been requested could be held in detention for a period of 60 days during which all procedural guarantees were accorded. The person in question could bring a motion challenging the decision before the Criminal Division of the Supreme Court of Justice. If the extradition was granted, the requesting State had a period of 30 days in which to take the person sought into its charge. Paragraph 38 of the report provided detailed information on the rules for extradition in cases involving drug-related offences. The Panamanian Judicial Code provided that the State would of its own motion bring criminal proceedings against any foreigner in Panama who was sought in another country, including for acts committed in violation of the Convention; once the investigation had been completed, the State would either extradite that person to the country in question or initiate proceedings in Panama. Panamanian nationals could not be extradited.

11. The manner in which the prison system operated was also important in terms of the implementation of the Convention. Article 28 of the Constitution laid down the principle that the objective of the system was to rehabilitate and to re-integrate prisoners, who received individualized treatment from interdisciplinary teams composed of psychiatrists, social workers, and other professionals. It was intended to provide teaching and vocational training in all prison establishments and, under certain circumstances, prisoners were authorized to attend courses of study outside the prison. The Ministries for Trade and Industry and for Education, the United Nations, the UNDP and a Spanish institute had established a programme whereby prisoners underwent appropriate training and, subsequently, upon their release, received a subsidy to set up their own small enterprise. A centre also existed where women were helped to readjust upon their release and taught arts and crafts. Prisoners who worked were paid, part of their wage went to the prison, part was deposited in a savings account and part went to their family. Lastly, each prison had a human rights office, a legal consultation service and a legal aid service for prisoners.

12. Articles 336 to 342 of the Penal Code dealt with cases of abuse of authority, illegal deprivation of liberty, failure to comply with the procedures required by law, unduly prolonged detention, etc. Such provisions emphasized the responsibilities of the prison system, which was administered by the National Prisons Department. That body, which came under the Ministries of the Interior and of Justice, was responsible for ensuring compliance with the minimum rules laid down by the United Nations.

13. The principle of territoriality was governed by articles 7 to 12 of the Panamanian Penal Code. The competence of the Panamanian system of justice extended to any offence, and particularly torture, committed abroad by a Panamanian with diplomatic immunity or where the injured party was a Panamanian national and offences committed by a foreigner who was in Panama. Acts of torture were among the offences that were automatically prosecuted. The principle of territoriality also applied, where necessary, to persons in respect of whom extradition had been refused on the grounds that they were being prosecuted for political offences.

14. Members of the national police were prohibited from employing torture or excessive force that might cause death, except in exceptional cases where their own lives or that of a person they were required to protect was at risk.

The same prohibition applied to officers of the Criminal Investigation Service, a subsidiary organ of the Attorney-General's Office which conducted the preliminary stage of the investigation; it was likewise prohibited for the members of either police body or of any other authority to invoke exceptional circumstances, such as a state of war or a state of emergency as justification for torture or other cruel, inhuman or degrading treatment. Capital punishment did not exist. All members of prison staff underwent a rigorous selection process before they were recruited and subsequently received regular human rights training. In 1997, the University of Panama had introduced a special five-semester course for prison warders. The United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders also organized courses in various countries of the region. Article 41 of the Constitution upheld the right of every person to submit complaints against the authorities, if a response was not forthcoming within 30 days, disciplinary or criminal proceedings would be instituted against the public servant involved. In certain cases, failure to respond to the complaint meant that it was considered admissible.

15. In connection with article 14 of the Convention, articles 119 to 130 of the Penal Code established the civil liability of any person guilty of an offence. Civil liability remained even if the person who had committed the offence was deemed incapable or if his sentence had been commuted or pardoned; it did not cease once the sentence had been served and was transmitted to the heirs of the person found guilty of the offence. A bill provided that the victim could participate in the criminal proceedings with full rights, including the right to appoint a lawyer, to submit evidence, to be informed of the procedural documents and, where necessary, to receive a prompt examination or medical treatment. That text was an important landmark in judicial procedure.

16. With regard to article 15 of the Convention, article 2120 of the Judicial Code prohibited any measure or promise, coercion or threat in order to secure a statement from the accused, the victim or a witness. Article 769 of the Judicial Code categorized as inadmissible any evidence that had been obtained through torture or the violation of human rights or was contrary to morality or public order. One important development since the previous report was that the overpopulated Modelo prison had been demolished; the warders who had subjected inmates to acts of torture and ill-treatment had been duly tried and sentenced; as was their right, they had appealed against the judgement. New prisons had been constructed with a view to improving prison conditions. A law had been enacted in December 1997 which contained a series of provisions to fill the existing judicial vacuum in connection with pre-trial detention; it provided that the duration of pre-trial detention could not exceed the minimum sentence corresponding to the offence. Even if the other side appealed against the acquittal of a person in pre-trial detention, the latter must be released. That provision applied likewise to the alleged perpetrators of offences such as drug trafficking or money laundering, whose release, might, however, be subject to conditional bail. If the suspect showed signs of mental disorder during pre-trial detention, he should be released and treated. Another recent development was the introduction of a regulation authorizing marital visits to prisoners, the arrangements for which were made by each establishment. There were no political prisoners in Panama. A programme of paid work had been introduced in prisons, details of which had

already been given. Competitions were held to select candidates for posts in the judicial system, in order to guarantee their independence, and the successful candidates underwent a probationary training period of six months. Another positive development was that the school offering judicial studies had been expanded and a school offering prison-related studies had been established within the Ministry of Justice to monitor compliance with international conventions and provisions. A bill had been drafted, with the assistance of a United Nations technical assistance programme, to restructure the prison system, which would become an entirely autonomous institution; all appropriate measures would be taken to ensure that rules regarding the treatment of prisoners were observed. Lastly, prisons were being computerized.

17. The CHAIRPERSON thanked the Panamanian delegation for its detailed introduction.

18. Mr. GONZALEZ POBLETE (Country Rapporteur) also thanked Mr. Saenz Fernandez for his introduction and said that dialogue was facilitated by the fact that he had previously represented his country in introducing earlier reports to the Committee. Following its ratification in August 1987, the Convention had entered into force in September 1987 and Panama had not made any declarations in connection with articles 20 and 22. Panama was also party to the Inter-American Convention to Prevent and Punish Torture.

19. The third periodic report of Panama, which had been due in 1996, had been received in the spring of 1997 and it had been purely owing to reasons of organization, and certainly not to lack of interest, that the Committee had not been able to consider it during its autumn 1997 session. Unlike the initial report, the second periodic report had adhered strictly to the Committee's guidelines. The third periodic report was structured in the same way as the second report and some paragraphs had been directly transposed. It would no doubt have been easier both for the authors of the report and for the Committee if the third report had been confined to new developments and simply referred back to the second periodic report where there had been no change.

20. During the consideration of the second periodic report, the representative of Panama had said that the definition of torture contained in the Convention, and indeed the Convention as a whole, had been duly incorporated into domestic legislation. Nonetheless, in the revised core document (HRI/CORE/1/Add.14/Rev.1), it was stated in paragraph 102 that the international human rights provisions contained in conventions, treaties and declarations of principles were incorporated into the national legal system by means of an act which showed that they had been adopted by the Legislative Assembly; and paragraph 103 stated that, under Panama's Constitution and laws, the provisions of international human rights instruments might be invoked before the law courts or the administrative authorities only after they had been incorporated into internal law through approval by the Legislative Assembly. It therefore appeared that the process of incorporating the provisions of the Convention involved two steps, and that meant that article 1 had not in fact been incorporated into domestic legislation. The Committee would like that point to be clarified.

21. The situation with regard to the hierarchy of provisions in the national legal system was not clear. In that connection, the Constitution stated only that the Convention was a fundamental law and not an ordinary law. Did the distinction between a fundamental law and an ordinary law relate only to procedural matters or did it have a bearing on the hierarchy of provisions?

22. In respect of article 2, paragraph 1, of the Convention, he requested further details on paragraph 5 as it related to paragraph 6 of the third periodic report. The prohibition on holding detainees incommunicado, if it was indeed applied strictly and without exception, was highly commendable since incommunicado detention was conducive to the commission of acts of torture. The fact that judges, magistrates and investigating authorities were required to visit prisons monthly was also a welcome measure.

23. Article 2, paragraph 3, of the Convention was reflected in article 34 of the Panamanian Constitution, which embodied the general principle that a person who had committed a manifest violation of a constitutional or legal provision to the detriment of another person could not be exempted from responsibility on the grounds that he had acted under orders from a superior. Nonetheless, an exception was made for members of the police force, in which case the hierarchical superior who had given the order was solely responsible. That provision appeared to contradict not only the Convention, but also the fact that officers of the Criminal Investigation Service were disqualified from invoking orders from a superior to exempt them from responsibility.

24. Paragraph 29 (k) of the report which related to article 3 of the Convention, indicated that extradition would not be granted when the executive branch so decided, stating its reasons. That was no doubt a positive point, since it allowed judicial proceedings to be counterbalanced by a decision of the executive; the Committee wondered whether the Panamanian authorities had ever had occasion to implement that provision. It was also regrettable that the report provided no information on legal or administrative provisions or on Panama's refugee and asylum policy. He asked the delegation to provide clarifications on the forced repatriation, in November 1996, of 88 Colombian refugees, which might well create a regrettable precedent for all Colombian refugees in Panama.

25. Paragraph 41 of the report stated that articles 156 and 160 of the Penal Code qualified as an offence any act carried out by a public servant that subjected a detainee to any act violating human rights, the penalties for which ranged from six months' to five years' imprisonment, depending on the nature of the offence committed and the category of the crime involved. It might be asked whether a term of five years' imprisonment was truly proportional to the gravity of some of the acts in question, particularly as paragraph 29 of the second periodic report referred to prison terms of up to 15 years for the same acts.

26. Paragraph 43 of the third periodic report stated that article 2181 (5) of the Judicial Code did not permit bail to be granted to persons accused of offences against individual freedom, accompanied by torture, degrading punishment or harassment. Was that measure intended to strengthen the criminal law provision against torture?

27. Lastly, with regard to article 8 of the Convention, paragraph 38 of the second periodic report stated that the act of torture, which was listed as a punishable offence under Panamanian legislation, was among those for which a person could be extradited from the Republic of Panama. It would therefore appear that extradition agreements had been concluded and the Committee would like to know whether the Panamanian authorities had received extradition applications for offences covered by article 4 of the Convention.

28. Mr. SILVA HENRIQUES GASPAR welcomed the fact that no act of torture or ill-treatment had been recorded in Panama, as well as the information provided on training courses organized for prison warders. The bill that had been drafted on the participation of victims in criminal proceedings, reflecting article 14 of the Convention, was also to be welcomed.

29. With regard to article 12 of the Convention, paragraph 68 of the report stated that competent officials from the judiciary and the Attorney-General's Office were required to carry out monthly visits to prison institutions in order to provide all inmates with detailed information on the status of their cases. The Committee wished to know whether those visits were made during the course of the inquiry or when the sentence was being served. Did a judge responsible for the enforcement of sentences ever intervene? He also asked whether the amnesty law had already entered into force, since the Committee was always concerned that amnesty laws might be incompatible with the obligations deriving from article 12 of the Convention.

30. Lastly, he requested clarifications on the incidents which had occurred in 1995, during which it appeared that the police had opened fire on demonstrators, killing four persons.

31. MR. SORENSEN said that only paragraphs 61 and 62 of the report related to article 10 of the Convention, since paragraphs 57, 58 and 59 in fact related to other articles. He asked whether the prohibition on torture was a subject in its own right in the training organized for prison staff. Were similar courses held for the police and what training was given to doctors?

32. The Committee always scrutinized statistics on the prison population particularly closely. During his visit to Panama in 1996, he had been surprised to learn that 90 per cent of prisoners were in pre-trial detention, while only 10 per cent had been tried and convicted. What were the present figures? The Committee had been very favourably impressed during its consideration of the initial report of Panama by the provision which required the judge to justify the need to place a suspect in pre-trial detention. Was that requirement still valid?

33. He welcomed the bill which provided for the release of a person whose period in pre-trial detention had exceeded the corresponding maximum sentence. Was the release decision taken by the governor of the prison or by a judge? Were the education and job programmes organized in prisons open only to convicted prisoners or also to persons being held in pre-trial detention?

34. He invited the Panamanian delegation, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights and the United Nations International Day in Support of Victims of Torture (26 June),

to recognize the competence of the Committee under articles 21 and 22 of the Convention and to make a contribution, albeit symbolic, to the United Nations Voluntary Fund for Victims of Torture.

35. MR. EL MASRY said that he was concerned to read in paragraph 100 of the core document (HRI/CORE/1/Add.14/Rev.1) that, in the event of foreign war or internal disturbance that threatened peace and public order, all or part of the effects of certain articles of the Constitution might be temporarily suspended. Since article 28, which prohibited torture, was among those cited, he would welcome further information, since that would appear to be contrary to article 2, paragraph 2 of the Convention.

36. MR. YU Minjia asked whether the State was responsible for paying compensation to a victim of acts of torture when the guilty party was insolvent or had acted either on superior orders or in the exercise of his duties.

37. The CHAIRPERSON thanked the members of the Panamanian delegation for their attention and invited them to answer the Committee's questions at the following meeting.

38. The Panamanian delegation withdrew.

The public part of the meeting rose at noon.

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COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 333rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 13 May 1998, at 3 p.m.

Chairman: Mr. BURNS

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Peru (continued)

Third periodic report of Panama (continued)

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GE.98-16145 (E)

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of Peru (continued) (CAT/C/20/Add.6):

Conclusions and recommendations of the Committee

1. At the invitation of the Chairman, Mr. Chávez Basagoitia (Peru) resumed his place at the Committee table.

2. Mr. CAMARA (Country Rapporteur) read out the conclusions and recommendations of the Committee concerning the second periodic report of Peru, in French:

"1. The Committee considered the second periodic report of Peru (CAT/C/20/Add.6) at its 330th, 331st and 333rd meetings, held on 12 and 13 May 1998 (see CAT/C/SR.330, 331 and 333) and adopted the following conclusions and recommendations:

A. Introduction

2. The Committee welcomes the submission of the second periodic report of Peru which, despite the six-year delay, nonetheless reflects the manifest wish of the State party to maintain dialogue.

3. The Committee also appreciates the fact that the size, quality and highly representative nature of the delegation of Peru has shown its interest in the work of the Committee.

B. Positive aspects

4. Peru's willingness to give effect to the recommendations that the Committee put forward during the consideration of the State party's initial report.

5. The abolition of the 'faceless judges' system.

6. The introduction into Peruvian legislation of a definition of torture consistent with the provisions of article 1 of the Convention.

7. The planned or actual reforms announced by the Minister of Justice, who headed the delegation of Peru, and which are designed to improve the human rights situation in the framework of the fight against terrorist violence and to reaffirm the independence of the judiciary.

C. Factors and difficulties impeding the application of the provisions of the Convention

8. The Committee finds no factors or difficulties impeding the effective application of the Convention by the State of Peru.

D. Subjects of concern

9. The frequent and numerous allegations of torture.

10. The maintenance of the competence of military courts to try civilians.

11. The excessive role still assigned to military courts at the expense of civil courts.

12. The laws passed between 1995 and 1998, which arguably seem designed as a renewed challenge to the independence of the judiciary:

(a) Act No. 26546 of 26 November 1995 establishing the Executive Commission of the judiciary.

(b) Act No. 26623 of 19 June 1996 reorganizing the Office of the Public Prosecutor and establishing the Executive Commission of the Office of the Public Prosecutor.

(c) Act No. 26695 of 3 December 1996 establishing temporary benches at the Supreme Court and 'higher courts'.

(d) Act No. 26933 of 12 March 1998 limiting the powers of the National Council of the Judiciary.

13. The maintenance of emergency legislation hardly conducive to respect for human rights in general and the elimination of torture in particular.

14. The practice of enacting amnesty laws which in effect accord impunity to persons guilty of torture, in violation of many provisions of the Convention.

E. Recommendations

15. While noting and welcoming the new measures that have been taken or announced, including some which are in the spirit of the recommendations made during the consideration of Peru's initial report, the Committee reiterates those recommendations and calls on the State party to expedite reforms designed to establish a State genuinely founded upon the rule of law.

16. The State party should consider repealing laws which may undermine the independence of the judiciary, and take account of the fact that, in this area, the competent authority with regard to the selection and careers of judges should be independent of the Government and the administration. To guarantee such independence, measures should be taken to ensure, for example, that the members of that authority are appointed by the judiciary and that the authority itself decides on its rules of procedure.

17. The State party should consider, pursuant to articles 6, 11, 12, 13 and 14 of the Convention, taking measures to ensure that victims of torture or other cruel, inhuman or degrading treatment, and their legal successors, receive redress, compensation and rehabilitation in all circumstances."

3. Mr. CHÁVEZ BASAGOITIA (Peru) said that he had taken note of the Committee's conclusions and recommendations and that written comments would be forwarded to the Committee at a later date. On behalf of the Minister of Justice he thanked the Committee for the climate of confidence and fruitful dialogue.

4. Mr. Chávez Basagoitia (Peru) withdrew.

The meeting was suspended at 3.20 p.m. and resumed at 3.30 p.m.

Third periodic report of Panama (continued) (CAT/C/34/Add.9)

5. At the invitation of the Chairman, Mr. Sáenz Fernandez, Mr. Kam Binns and Mr. Bonaga (Panama) resumed their places at the Committee table.

6. Mr. SÁENZ FERNANDEZ (Panama) said that there was no need to adopt additional legislation to ensure implementation of the Convention in Panama; under article 4 of its Constitution, Panama was obliged to apply the provisions of the conventions to which it was a party. Supreme Court rulings in 1991 and 1993 had further underlined the fact that international conventions and treaties ratified by Panama became part of the body of law of the Republic immediately after ratification. Courts were therefore bound to enforce the provisions of the Convention.

7. Under article 2038 of the Judicial Code, nobody could be held incommunicado at any time. Detainees were entitled to see a lawyer immediately after their arrest.

8. Acts of torture or ill-treatment could not in any circumstances be justified by the fact that the perpetrator was following the orders of his superior officer. Where possible, both the perpetrator and the officer who had issued the order were prosecuted.

9. Extradition could be refused if the appropriate legal requirements had not been met by the country requesting it and in many other cases which were set out in the report. In November 1996, 88 Colombians who had been refugees in Panama had been sent back to their country of origin, but only after the appropriate legal proceedings had run their course, including consultations with the Colombian authorities which had resulted in an agreement and an assurance that the refugees would run no risk whatsoever by returning to their homes. There were no reports that the agreement had been violated in any way.

10. Paragraph 41 of the third periodic report (CAT/C/34/Add.9) stated that penalties for torture or other ill-treatment ranged from six months to five years. However, the new Penal Code that was being drafted laid down harsher penalties for such behaviour.

11. The fact that bail was not granted to persons accused of offences against individual freedom, accompanied by torture or other ill-treatment, did not conflict with the idea of a person being innocent until proved guilty.

12. The crime of torture, which was recognized as a punishable act under Panamanian legislation, was considered an offence for which the Republic of Panama could grant extradition. It was gratifying to note, however, that in the period since the second periodic report of Panama (CAT/C/17/Add.7) had been submitted there had been no request for extradition relating to allegations of torture.

13. A member of the Committee had asked at what stage in the legal proceedings prison visits were made by judges, magistrates, prosecutors and penitentiary system officials. Visits were made once a month at all stages: during pre-trial proceedings, the intermediate period and the trial proper. Each inmate received individual attention and was provided with all relevant information regarding the date set for hearings and the status of the proceedings. The detainee was free to ask questions and file complaints and petitions.

14. The National Correction Department at the Ministry of Justice was the responsible authority for the enforcement of sentences. However, the system was antiquated and very laborious. In some cases the formalities involved the entire hierarchy right up to the President of the Republic. The preliminary draft Penal Code provided for a magistrate with specific responsibility for the enforcement of sentences who would be appointed through a competitive procedure and would not form part of the executive but of the judiciary. His duties would include: supervision of detainees' files and records to ensure that they were released on completion of their sentences or, alternatively, released on parole; and establishment, on the basis of studies by the interdisciplinary board, of working hours for service outside the place of detention.

15. Representatives of the Panamanian Human Rights Committee were authorized to visit prisons without prior notification. Representatives of the National Bar Council and of non-governmental organizations (NGOs) concerned with the proper functioning of places of detention were also admitted and allowed to converse with the inmates. Detainees were entitled to weekend family visits and the relatives of detainees were free to make suggestions and lodge complaints.

16. The preliminary draft amnesty law had been scrapped at a very early stage owing to opposition from the judiciary, the National Bar Council and the general public.

17. With regard to the NGO report concerning an incident in 1996in which the police had allegedly used firearms, the National Police operated a centre (Oficina de Responsibilidad Patrimonial) that investigated all complaints regarding human rights violations. The Office of the Public Prosecutor could also initiate an investigation under articles 1965 and 1966 of the Judicial Code. He could not recall the case in point but assured the Committee that

all such cases were investigated by one of the bodies with jurisdiction in that area. Legal proceedings were currently under way against a number of National Police officers accused of punishable acts.

18. Prison guards received instruction in the provisions of the Convention and other human rights instruments and courses were tailored to the intellectual level and assimilative capacity of the participants. Officers of the criminal investigation service (Policia Judicial) were trained in interrogation and investigation theory and techniques not only by national experts but also by visiting lecturers from Canada, the United States and Spain.

19. A member of the Committee had commented on the number of persons in pre-trial detention. In 1996, the High Commissioner for Human Rights had been informed during a visit to the country that only 10 per cent of detainees had been tried and convicted. The overcrowded "Modelo" prison had since been closed down and steps had been taken to reform the administration of justice, especially through the adoption of Act No. 93 of December 1997. Under the new law, detainees who had spent a period in pre-trial detention equal to the prison term to which they were liable must be released forthwith. Detainees who had been acquitted must be released immediately even if an appeal was pending. Persons held in preventive detention on charges relating to drug offences were released subject to certain conditions such as prohibition from leaving the country without permission or requirement to reside within a certain geographical area. Act No. 1 of 1995 simplified legal proceedings. Panama had begun implementing provisions of the model code of criminal procedure for Latin America concerning preliminary hearings, direct proceedings and abridged proceedings. During preliminary hearings, magistrates must deliver a ruling as soon as the pleadings, which could not last for more than 30 minutes, had been completed. On receiving the record relating to a case, judges must set a date for the hearing within 45 days. The courts had been regrouped: for example, the 15 courts of the first circuit in Panama City had been divided into groups of five, each of which had an assigned defence counsel and two prosecutors to prevent recurrence of the delays due to the rota system. A detainee could also opt for a direct trial, which would take place at the earliest possible opportunity and would offer the possibility of a reduction of the penalty incurred by up to one third. Article 1974 of the Judicial Code provided for an amicable settlement between the victim and perpetrator for certain offences provided that the victim received appropriate compensation. In his view, by the end of 1998 a significant reduction in the number of persons held in pre-trial detention would have been achieved.

20. With regard to the individual who had been sentenced to a prison term of 8 years and had already spent 10 years in pre-trial detention, he stressed that such cases were very exceptional and might arise, for example, when defence counsel in a criminal case used a variety of procedural tactics provided for in the Code of Criminal Procedure for the postponement of a hearing. Only one postponement would henceforth be permitted. As from 1999, contumacious proceedings - trials of persons in their absence - would no longer be permitted because they led to delays in the trial of other cases.

21. The National Correction Department was the authority that decided when a person serving a prison sentence was to be released. In the case of persons held in preventive detention, release was ordered by the judge dealing with the case.

22. Prison work was voluntary, both for pre-trial detainees and for convicted prisoners. Although participation in prison work programmes in no way affected the presumption of innocence in the case of persons in pre-trial detention, it was nevertheless perceived by the detainees themselves as incompatible with their status. Detainees received remuneration for their work: one portion was kept for private expenses, another was paid into a savings account, and the remainder was remitted to their families.

23. He would include the Committee's suggestion that Panama should make a contribution to the United Nations Voluntary Fund for Victims of Torture in his report to the authorities concerned.

24. With regard to article 2, paragraph 2, of the Convention, he drew attention to paragraph 100 of the core document (HRI/CORE/1/Add.14/Rev.1) containing a quotation from article 51 of the Constitution, which provided for the possibility of suspending certain constitutional guarantees, including those provided for under article 28 concerning the prison system, during a state of emergency. With regard to the question whether the suspension of the guarantees under article 28 was consistent with the application of article 21 concerning due process and article 22 concerning the presumption of innocence and the right to legal counsel, a relevant case had been referred to the Supreme Court in 1987 when a member of the army chief of staff had resigned, levelling charges against other members. The ensuing political crisis had led to the partial suspension of certain articles of the Constitution. The Supreme Court, in a mandatory constitutional statement, had ruled that even in a state of emergency the principles governing the prison system, in particular the presumption of innocence and the right to counsel, could not be violated since they constituted a universal norm that transcended all domestic legislation. The Court had also ruled in 1993 that the American Convention on Human Rights, ratified through Act No. 15 of 1977, article 8 of which laid down, inter alia, the principles of presumption of innocence and due process formed part of the constitutional core and could not be suspended.

25. Where a public official committed an offence and incurred civil liability, the State was held to be responsible. In a recent case in which a former officer of the defence forces had been found guilty of torture and sentenced, the State had been obliged to pay damages. Furthermore, under a recent bill drafted on the initiative of the President of the Supreme Court, the State would not only be required to pay damages but also to defray any medical costs in cases where the perpetrator of an offence was insolvent.

26. Mr. KAM BINNS (Panama) thanked the Committee for its encouragement, which would motivate the State party not just to submit better reports but also, in daily practice, to enhance the fulfilment of its international obligations under the Convention. In recent years Panama had been developing several initiatives in accord with the United Nations, including the creation of the new institution of the office of the People's Advocate. That was an example of how, with international cooperation, Panama was attempting to deal

with some very serious problems. With the cooperation of the former Centre for Human Rights, it was also working on a project for training police in the field of human rights, which was being financed entirely by the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights and was aimed in part at improving the professionalism of the police and their observance of human rights and fundamental freedoms. Recommendations resulting from the first stage of the project, which had already been completed, included new training courses, not just on general aspects of human rights but also on torture, the rights of the child and domestic violence. In addition, the Government of Spain had sponsored a very important project on police training in the field of human rights, which complemented other regional efforts.

27. Regarding Panama's difficulties in expediting criminal proceedings, and the slowness of the judiciary, the Government had recently negotiated an initial loan of $18 million with the Inter-American Development Bank for making the administration of justice more efficient, transparent and honest. The loan was part of the second wave of reforms in Panama; the first wave had concerned privatization, competition and other aspects relating to globalization and the economic structure, while the second wave dealt with such matters as the administration of justice and combating corruption.

28. Panama would gladly make an effort to contribute to the United Nations Voluntary Fund for Victims of Torture. The country had much faith in international cooperation, from which it had benefited and to which it therefore had a moral duty to contribute. However, as was the case with the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights, its contribution would be little more than a token one, owing to the difficult economic situation it faced, like other developing countries.

29. The presence of his delegation was an expression of the wish of the new Government that had taken office in September 1994 to develop a broad, transparent, comprehensive policy in the field of human rights, one which was closely related to international cooperation. Panama's actions within the United Nations system since then had all been aimed at strengthening that policy. He hoped that in the next millennium, better relations among people would do away with the need for the Committee against Torture and other treaty-monitoring bodies.

30. Mr. GONZALEZ POBLETE (Country Rapporteur) asked what the State party's policy was with regard to asylum and refuge. In the past two years, Panama had admitted more than 200 refugees, most of them from Nicaragua, El Salvador, Cuba and Haiti. He was, however, concerned at the State party's reservations with regard to refugees from Panama's eastern border, and specifically the Colombian region of Urabá, which was a zone of conflict. People from that region risked being exposed to the dangers specified in article 3 of the Convention.

31. Mr. KAM BINNS (Panama) said his country fulfilled its international obligations under the 1951 Convention relating to the Status of Refugees and other relevant international instruments. It had traditionally been a country of asylum and refuge. In addition to the countries of origin mentioned by Mr. González Poblete, Panama had also harboured large numbers of Chileans,

particularly since 1973. The situation of refugees from Colombia, however, was complex, as the conflict in that country was widespread and appeared to cover the entire nation.

32. Panama had perhaps been strict in its granting of refugee status, but that was because in many cases it was a matter not of refugees, but of internally displaced Colombians who, in trying to escape violence at home, had ended up in Panama. Most of them admitted they had come to Panama in search of safety, but had no particular desire to stay there. Unfortunately, Panama had often had to tell them it was unable to guarantee their safety in the places where they had settled, such as Darién, an inhospitable region where security forces were often non-existent or understaffed.

33. Panama did have bilateral cooperation mechanisms with Colombia, notably the Commission on Good Neighbourliness and Integration, in which such topics as refugees were discussed. In addition, the Colombian authorities had identified places where it guaranteed to protect the physical integrity and ensure the reintegration of internally displaced persons returning from Panama. The Office of the United Nations High Commissioner for Refugees (UNHCR) had helped with their repatriation, and there was significant cooperation between Panama and Colombia on the matter. However, the fact that there was not always access to the areas of settlement had indeed, as the media reported, created the impression that forced repatriation was taking place. Concerned about the problem and its international implications, Panama had conferred with the new UNHCR regional director in March 1998 in order to find solutions to the problem, which appeared to be recurrent. Panama was prepared to assume its responsibility towards refugees within the international framework, but the country of origin should also do so, strengthening mechanisms designed to ensure a lasting peaceful solution to the conflict.

34. Panama was willing to continue discussing the matter, which was very sensitive, as the image conveyed was not always one of complying with standards regarding refugees. It was looking for solutions, such as granting provisional refugee status, which other countries, such as Spain, were already doing, and setting up a programme to anticipate such problems and deal better with the displaced Colombians.

35. The delegation of Panama withdrew.

The meeting was suspended at 4.40 p.m. and resumed at 5.35 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Third periodic report of Panama (continued) (CAT/C/34/Add.9)

Draft conclusions and recommendations of the Committee

36. At the invitation of the Chairman, Mr. Sáenz Fernandez, Mr. Kam Binns and Mr. Bonaga (Panama) resumed their places at the Committee table.

37. Mr. GONZÁLEZ POBLETE (Country Rapporteur) read out the conclusions and recommendations of the Committee concerning the third periodic report of Panama, in Spanish:

"The Committee considered the third periodic report of Panama (CAT/C/34/Add.9) at its 332nd and 333rd meetings, on 13 May 1998 (CAT/C/SR.332 and 333) and adopted the following conclusions and recommendations.

A. Introduction

1. Panama ratified the Convention on 24 August 1987. It has not made the declarations provided for in articles 21 and 22 of the Convention.

2. It is also a State party to the Inter-American Convention to Prevent and Punish Torture.

3. The third periodic report covers the period from 21 September 1992, when the second periodic report was submitted, to 19 May 1997.

4. The representative of Panama provided additional information during the oral presentation, particularly regarding events after that period.

5. The Committee appreciates Panama's sending a high-level delegation to present the report and the cordial spirit of the discussions.

B. Positive aspects

1. The Committee has received no reports of cases of torture during the period covered by the report.

2. Panamanian legislation contains appropriate safeguards for the effective protection of human rights and especially the prevention of torture, in particular the maximum period of 24 hours, subject to no exception, within which a detainee must be brought before the competent judicial authority, and the prohibition against holding anybody incommunicado.

3. The establishment of the Office of the People's Advocate.

4. Other positive measures include the provision in the Judicial Code for a system of monthly visits to prison establishments by judges, magistrates and investigating officers and the establishment by the Public Prosecutor's Department of a 'prison mailbox' system to facilitate the exercise by prisoners of their right to lodge complaints and petitions.

5. The implementation of a human rights training project for members of the National Police, and the introduction of a technical course on penology at the Faculty of Law and Political Sciences of the University

of Panama, both of which initiatives seem to demonstrate an intention to professionalize this area of public service.

6. The State authorities' concern for restructuring the Judiciary to improve the performance of its important role in the effective functioning of a State under the rule of law.

C. Subjects of concern

1. The absence in Panama's legislation of a stipulated maximum duration of pre-trial detention.

2. The high proportion of unsentenced detainees in Panama's prisons.

3. Compliance with article 3.1 of the Convention may be jeopardized by the repatriation of refugees coming from neighbouring countries.

D. Recommendations

1. To consider the possibility of making the declaration provided for in article 22 of the Convention.

2. To adopt all necessary safeguards for the protection of refugees from neighbouring countries, in particular so as to ensure that in case of repatriation they are not placed in the situation referred to in article 3.1 of the Convention."

38. Mr. FERNANDEZ (Panama) said that his delegation welcomed the Committee's conclusions and recommendations. They would to a large extent be implemented when the draft Penal Code and Judicial Code, which accorded more closely with the Convention, were enacted. Efforts had always been made to respect the right of asylum and consider the sensitive situation of the Colombian nationals.

39. The CHAIRMAN thanked the Panamanian delegation for its profitable exchange of views with the Committee.

40. The delegation of Panama withdrew.

The public part of the meeting rose at 5.45 p.m.

UNITED
NATIONS

CAT

Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

Distr.
GENERAL

CAT/C/SR.334
19 October 1998

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 334th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 14 May 1998, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.334/Add.1.

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GE.98-16156 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 6) (continued)

Initial report of Kuwait (CAT/C/37/Add.1)

1. At the invitation of the Chairman, Mr. al-Noori and Mr. al-Jassam (Kuwait) took places at the Committee table.

2. The CHAIRMAN invited the Kuwaiti delegation to introduce Kuwait's initial report (CAT/C/37/Add.1).

3. Mr. AL-NOORI (Kuwait) stressed the importance that Kuwait attached to the submission of its initial report in the context of the fiftieth anniversary of the Universal Declaration of Human Rights and the forthcoming celebration, on 26 June, of United Nations International Day in Support of Victims of Torture.

4. The Kuwaiti people resolutely condemned all acts of torture and associated practices. Action at the national level - establishment or strengthening of democracy and the rule of law - was undertaken in a context of international cooperation and, in particular, of respect for all provisions of the Convention. Kuwaiti lawmakers, concerned to give constitutional status to the provisions prohibiting torture, had devoted two articles of the Constitution to the subject. Before the promulgation of the Constitution, the Penal Code and the Code of Criminal Procedure had already contained provisions criminalizing torture and prohibiting the use of evidence obtained through torture in the courts. Unfortunately, cases of torture had been recorded in Kuwait during the brutal occupation of the country in 1990-1991. The United Nations Security Council had, in fact, adopted a number of resolutions on the subject. Concluding his general introduction, he reaffirmed Kuwait's commitment to the Charter of the United Nations and to its aims and noted that Kuwait had been one of the first countries in the region to accede to the Convention.

5. Introducing the report, he said that the country was 17,000 km^2 in area and that the population numbered some 2 million inhabitants, of whom 750,000 were Kuwaiti nationals. There were many foreigners, 120 nationalities being represented. Oil was the country's main resource and Kuwait boasted one of the highest per capita incomes in the world.

6. Kuwait had opted for a political structure that was midway between a parliamentary and a presidential regime. Legislative authority was vested in the National Assembly, which also had supervisory authority over the executive. The Assembly consisted of 50 members. The judiciary was entirely independent, as stipulated by the Constitution.

7. The protection of human rights was guaranteed by a large number of laws and by chapters 2 and 3 of the Constitution. Many legislative enactments had been promulgated over the years with a view to strengthening the protection of fundamental human rights, and an article of the Constitution stipulated that any amendment thereto should serve that purpose. A Standing Commission on

human rights affairs had been established as well as a Standing Committee in the Ministry of the Interior, which was authorized to receive complaints from citizens concerning violations of their rights.

8. With regard to the application of international treaties in Kuwait, article 70 of the Constitution stipulated that treaties were automatically incorporated in national legislation and had force of law. With regard to information and publication, it should be noted that, pursuant to the Constitution, all legislation must be published in the Official Gazette and in other journals where appropriate. Sentences handed down by the Kuwaiti courts against State officials convicted of acts of torture were annexed to the report.

9. During the period of occupation already referred to (1990-1991), acts of torture had been committed by Iraqi soldiers. In the intermediate period that followed the occupation, i.e. before the return of the legitimate authorities from Saudi Arabia, Kuwaitis had regrettably also been guilty of human rights violations. On its return, the Government had given priority to the task of ending such violations and ensuring that the perpetrators were brought to justice.

10. With regard to the implementation of article 3, he quoted a passage from the report of a humanitarian organization concerning refoulement and extradition procedures conducted in full compliance with the provisions of the Convention.

11. Articles 120, 121 and 125 of the Penal Code were fully consistent with the provisions of article 4 of the Convention.

12. With regard to extradition, the provisions of the Convention were comparable to similar provisions of the International Convention against the Taking of Hostages and other anti-terrorist instruments. In its bilateral relations, Kuwait sought to conclude equitable extradition agreements that were compatible with respect for human dignity. It endeavoured to establish sound judicial cooperation by signing bilateral and international treaties and, in cases where no agreement existed, it based extradition on reciprocity, the aim being to prevent criminals from evading justice.

13. The training of officials provided for in article 10 of the Convention was conducted in a number of different ways. Law students at Kuwait University studied the Penal Code and the Code of Criminal Procedure, both of which contained provisions prohibiting the use of torture. Police Academy students and future judges attending the Institute for Judicial Studies were also made aware of the issues involved. He understood that the Committee had developed precise guidelines in that regard which his country was very eager to learn about and put into practice.

14. Article 11 of the Convention stipulated that each State party should keep interrogation rules and practices under systematic review. The Kuwaiti Code of Criminal Procedure was quite explicit in that regard, stipulating, in particular, that a suspect was entitled to refrain from making a statement in the absence of his lawyer. With regard to the application of articles 12 and 13, all investigations of acts of torture were conducted with the greatest

dispatch, chiefly to ensure that the time spent in custody was as short as possible. The rights protected in article 14 were guaranteed by the Civil Code, and a torture victim could claim reparations and compensation for any damage incurred.

15. Confessions or statements obtained under torture could not be deemed admissible by Kuwaiti courts under any circumstances: in such cases, they were declared null and void. Article 16 of the Convention was also fully applied in Kuwait. In conclusion, he stressed his country's commitment to the strengthening of human rights, a goal that must be pursued relentlessly at both the national and international level. He eagerly awaited the Committee's advice and guidance and welcomed the dialogue that had thus been initiated.

16. The CHAIRMAN (Country Rapporteur) thanked the Kuwaiti delegation for its interesting introduction, which had already shed light on a number of points. As rapporteur, he noted that the initial report had been received only six months after the due date, which was exceptional and deserved to be stressed. On the whole, the report was in conformity with the Committee's general guidelines concerning the form and content of reports.

17. The first question concerned the judicial system: who appointed judges, what criteria were applied and, above all, who could remove them from office and under what circumstances?

18. Paragraph 30 of the report referred to "an innocent person who [had] not yet been convicted", it being understood that, if a person was found guilty, the punishment imposed on him could not be regarded as torture or degrading treatment. But the Committee was concerned not only with persons who had not been convicted but equally with those who had, because the provisions of the Convention applied to them too and, in their case, it was the form of punishment that was important. Perhaps paragraph 30 referred to article 1 of the Convention, which stated that the term torture did not apply to suffering arising from lawful sanctions. However, article 16, which dealt with cruel, inhuman or degrading treatment or punishment, contained no such reservation, and it was quite possible that a punishment duly prescribed by law was incompatible with article 16. Moreover, the "sanctions" mentioned in article 1 must not only be lawful under domestic law but also in terms of basic internationally recognized norms. The type of punishment imposed was in that respect a vital element. The legitimacy of capital punishment as such was still a matter of debate among specialists in international law, but it was an indisputable fact that the use of particularly cruel methods of execution by States was a clear breach of international law and such executions could not be viewed as lawful, even under the terms of article 1 of the Convention. He therefore wished to know what kinds of punishment were imposed in Kuwait; he knew that capital punishment existed, but what methods were used for the purpose? Was there corporal punishment and, if so, what form did it take?

19. He would appreciate additional information on the two cases of torture mentioned in paragraph 41 of the report, more specifically on the behaviour of the police officers in question. With regard to the remedies available to individuals, it would be interesting to know whether civil and administrative remedies also existed in the case of criminal proceedings.

20. With regard to article 1 of the Convention, he asked how the provisions of the Convention were incorporated in domestic law, in particular whether the definition of torture given in the Convention was included in criminal law, because, in the Committee's view, that was the best way for State parties to implement article 1. In the absence of such a reference to the definition given in the Convention, it was virtually impossible for them to compile accurate information on the incidence of torture and report it to the Committee. The definition also made it possible to establish a qualitative distinction between torture and offences that were less serious in moral terms, such as assault, and to treat them differently. Could due obedience to a higher authority be invoked as a defence under Kuwaiti domestic law? Or was a defence of necessity applicable in such cases and, if so, could it be applied to acts of torture?

21. The representative of Kuwait had provided useful information on violations committed in Kuwait during the transitional period, specifying in particular that the Kuwaiti authorities, after resuming control over the territory, had brought persons who had committed acts of torture to justice. In how many cases had legal action been taken and what had been the outcome?

22. With regard to asylum, it would be useful to have a brief description of the procedures followed when a person applied at the border for admission as a political refugee. Moreover, he gathered that there were some 117,000 Bedouins in Kuwait: were they Kuwaiti nationals and, if not, what was their legal status?

23. Paragraphs 72, 86 and 88 of the report contained information on the implementation of article 4 of the Convention but he wished to know, more generally, about the powers of arrest of the police force, on the one hand, and the security forces, on the other, unless they were a single body in Kuwait. Did a summary arrest procedure exist and, if so, in what cases was it applicable? What were the powers of detention of the police and security forces and what was the maximum period of such custody? Was there an administrative detention regime? Were all forms of detention subject to review under a habeas corpus or similar procedure, how soon could a detained person communicate with a relative and a lawyer, and was there legal provision for incommunicado detention? Lastly, he wished to know what exactly were the functions of the examiner referred to in paragraph 86 of the report.

24. How many extradition treaties had Kuwait signed and could it extradite its own nationals? If a Bosnian commander living in Kuwait was accused by Croatia of having tortured Croatians during the well-known recent events, there being no question of a crime against humanity, systematic torture, etc., and if Kuwait had not signed an extradition treaty with Croatia but had been provided by the latter with all requisite evidence in support of its extradition request, would Kuwait have that person brought to justice? In other words, was its jurisdiction universal? Mutual legal assistance was very important for the implementation of the Convention and he wished to know how many such agreements Kuwait had concluded and with which States. Lastly, he asked whether it had contributed to the United Nations Voluntary Fund for Victims of Torture and, if not, whether it would contemplate doing so to mark the fiftieth anniversary of the Universal Declaration of Human Rights.

25. Mr. EL MASRY (Alternate Country Rapporteur) congratulated the State party, the first in his region to have submitted a report to the Committee, and thanked the representative of Kuwait for his highly informative introduction.

26. Article 10 of the Convention dealt with education regarding the prohibition against torture, not only for law enforcement officers but for all civil or military personnel and medical personnel who might be involved in the custody, interrogation or treatment of individuals subjected to any form of detention. It had been stated in that connection that the Penal Code and the Code of Criminal Procedure were on the syllabus of the Faculty of Law, the Policy Academy and the Institute of Judicial Studies, but article 10 was basically concerned with training and education in human rights and in respect for such rights. The delegation had announced, moreover, that it was perfectly willing to follow the Committee's suggestions in that regard.

27. With regard to article 11 of the Convention, it would be useful to know whether Kuwait had a procedure for monitoring compliance with interrogation rules and practices and the provisions regarding the treatment of prisoners, and whether such supervision was mandatory. Paragraphs 54 and 55 of the report concerning the many human rights violations perpetrated in Kuwait during the transitional period stated that measures had been taken to prevent any recurrence of such violations: he wished to know what those measures were. Paragraph 110 stated that the Kuwaiti courts had tried persons who had been found to be involved in acts of torture. Were they law enforcement officers, such as prison wardens, what was the nature of the offences committed and how had the investigation been conducted? Had disciplinary action been taken against the persons concerned and what judgements had been handed down by the courts? With regard to article 12 of the Convention, he asked the delegation to specify, with regard to psychiatric hospitals, what procedure existed for filing a complaint in cases of torture and what action was taken on such complaints.

28. With regard to articles 12 and 13 of the Convention, he would appreciate additional information about the complaints of torture mentioned in paragraph 110 of the report. He asked whether the perpetrators had been law enforcement officers, whether disciplinary measures had been taken against them, what offences had been involved and what judicial decisions had been taken. He inquired about the procedures applicable to acts of torture committed in psychiatric hospitals. He also wondered about the meaning of the phrase "and ensure the triumph of justice" at the end of the first sentence of paragraph 110. For the Committee, ensuring the triumph of justice meant punishing the torturer, compensating the victim and providing for his rehabilitation. With regard to article 14, he asked for clarification of the first sentence of paragraph 124 of the report, which stated that torture obviously fell within the category of offences constituting unlawful acts; was that status reflected in a legal instrument? With regard to article 15 of the Convention, the Committee naturally welcomed the fact that the rules of evidence in Kuwait were in conformity with the principle established long ago in the provision of the Islamic Shari'a according to which "anything based on an invalid premiss [was] itself invalid". More generally, he congratulated the Kuwaiti authorities on the various measures they had taken to restore normal democratic conditions in the country.

29. Mr. SØRENSEN, referring to the application of article 10 of the Convention and speaking as a doctor, stressed the importance of training doctors to deal with the problem of torture in a country such as Kuwait, where many individuals had been tortured during the war. The after-effects of torture were long-lasting and doctors should be able to detect them in their patients and offer them assistance. With regard to article 14 of the Convention, he was pleased to note that a State-funded rehabilitation centre for torture victims had been established in Kuwait after the war and had treated a large number of individuals - one or two thousand or even more. Kuwait had not contributed to the United Nations Voluntary Fund for Victims of Torture and could perhaps envisage doing so on the occasion of United Nations International Day in Support of Victims of Torture, to be observed on 26 June, in accordance with a United Nations General Assembly resolution. A contribution would be important not only because the Fund needed money, but also because torture victims would benefit greatly from the participation of a country with experience of the phenomenon of torture.

30. Mr. CAMARA, warmly welcoming the submission of Kuwait's report, said that Islamic countries had nothing to fear from an appearance before the Committee, since there was no place for torture in the rules of evidence established by Islamic law. Referring to paragraph 34 of the report, he asked whether there was a definition of torture in Kuwaiti legislation and what penalties were prescribed for officials found guilty of acts of torture. Noting from paragraph 105 of the report that no arrested person could be held in custody for more than four days without a written order, he asked what period of custody could be ordered by a judge. With regard to the 1990 and 1996 Organization of the Judiciary Acts, he asked for information on the recruitment of judges. Was there a body responsible for administering judges' careers and, if so, to whom was it answerable and how were its members appointed?

31. The CHAIRMAN thanked the Kuwaiti delegation and invited it to respond to the questions at the next meeting.

32. The Kuwaiti delegation withdrew.

The public part of the meeting was suspended at 11.40 a.m. and resumed at noo 1

Conclusions and recommendations concerning the second periodic report of New Zealand (continued)

33. The CHAIRMAN read out a letter* sent to him by Mr. Farrell, Permanent Representative of New Zealand to the United Nations Office at Geneva, after his delegation had taken note of the Committee's conclusions on the second periodic report of New Zealand.

> "We advised the Committee at the conclusion of its consideration of New Zealand's second periodic report under Article 19 of the

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* This letter is reproduced in full pursuant to a decision by the Committee.

Convention against Torture that the New Zealand Government would wish to submit further comments in response to the concluding observations and recommendations of the Committee.

Having considered carefully the recommendations made by the Committee, the New Zealand Government wishes to express its view that, with respect to the recommendations contained in paragraphs 8 and 9 of the Committee's conclusions and recommendations, it has already taken the action recommended by the Committee. These actions, taken by the Government in response to the Mangaroa Prison inquiry, are fully set out in New Zealand's second periodic report and supporting information. New Zealand's statement introducing the report brought to the attention of the Committee the further significant actions taken since the reporting period.

For the Committee's clarification, the New Zealand Government wishes to reiterate the following points made in New Zealand's statement and by the delegation in response to the Committee's questions:

The inquiry by the New Zealand Police into allegations of assault by inmates of Mangaroa Prison has been completed. After referring Police files to the Solicitor-General it was decided that no criminal prosecution would be undertaken. Internal disciplinary action was taken against a number of prison officers by the Department of Corrections.

The Ministerial investigation of Mangaroa Prison has been completed. The results of the inquiry are contained in a report annexed to New Zealand's second periodic report and set out in paragraphs 16 to 21 of the report.

There have been significant changes to the operations of Mangaroa Prison, and in prisons generally, as a result of the Government's inquiry, to ensure that such incidents cannot occur again. Those highlighted by New Zealand's introductory statement and dialogue with the Committee include the following:

- Mangaroa Prison has a new regional manager, a new management structure with more accountability, a new name and constructive new projects, for example cooperation with the Maori community to provide inmates and managers with cultural advice and support;

- New Penal Institutions Regulations are about to come into force, and amendments have been made to the Penal Institutions Act 1954, which provide for improved operational standards in New Zealand prisons. The amendments include specific limitations on the use of force in cases where the restraint of inmates is necessary;

- A Custodial Assurance Board has been established to ensure the secure custody and safe, fair and humane treatment of persons within the corrections system;

- Revised grievance procedures for prison inmates are now in place. The internal complaints process has been strengthened. The role of the Ombudsman has also been strengthened to provide an effective external complaints process, in addition to that of the Prison Inspectorate which reports to the Chief Executive of the Department for Courts and the Custodial Assurance Board;

- Steps have been taken to ensure inmates are aware of, and are able to access, these procedures;

- Procedures for recruiting prison officers have been revised to ensure that officers have the appropriate competencies, and new initiatives are being implemented with respect to their ongoing training and development.

Given this comprehensive response to the situation at Mangaroa prison, the New Zealand Government would appreciate the Committee's further consideration of the above points as part of its deliberations on New Zealand's second periodic report. We should also appreciate it if this letter could be read into the record of the Committee."

34. In response to the letter, the Committee had decided by consensus to express regret for the mistake to which the Ambassador of New Zealand had drawn attention, to reproduce the Ambassador's letter in full in the summary record of the public meeting, and to insert a reference to the symbol of the summary record in paragraph 1 of the conclusions and recommendations on the second periodic report of New Zealand to be published in the Committee's annual report. The reference to that record and to the records of the other meetings at which New Zealand's report had been considered ensued from the Committee's decision to view the above-mentioned letter and the regrets expressed by the Committee as forming an integral part of the Committee's consideration of the second periodic report of New Zealand.

35. Mr. EL MASRY suggested that the Chairman should reply to the Ambassador of New Zealand, informing him of the Committee's decision.

36. The CHAIRMAN said that, if there was no objection, he would send a letter to the Ambassador of New Zealand on behalf of the Committee.

37. It was so decided.

The public part of the meeting rose at 12.10 p.m.